

November 18, 2024

Via ECF

Hon. Ona T. Wang
 Daniel Patrick Moynihan United States Courthouse
 500 Peral Street
 New York, NY 10007-1312

RE: *Authors Guild et al. v. OpenAI, Inc., et al.*, No. 1:23-cv-08292-SHS, and
Alter et al. v. OpenAI Inc., et al., NO. 1:23-cv-10211-SHS

Dear Judge Wang:

Pursuant to Rule IV.a of Your Honor's Individual Practices, we submit this joint letter-motion to seal on behalf of the Author Plaintiffs in the above-captioned actions and Microsoft Corporation in connection with documents referenced in Plaintiffs' contemporaneously filed letter motions regarding the data working group and Microsoft's LLMs and licenses. The redactions in Plaintiffs' letter motions describe and attach documents that Microsoft and a third party produced in discovery and designated as Highly Confidential – Attorneys Eyes Only under the Protective Order in this matter.

Plaintiffs' Position on Sealing. Plaintiffs join the request of Microsoft that the third-party documents referenced below should be sealed. Plaintiffs take no position as to the sealing of Microsoft's documents.

Microsoft's Position on Sealing. For the reasons stated below and articulated in the supporting declaration of Lucky Vidmar, Microsoft respectfully requests the Court grant this motion for leave to file under seal.

Microsoft moves to seal:

1. Any limited portions of Plaintiffs' letter motions that reference or summarize confidential materials;
2. The following documents (identified by their beginning Bates or Exhibit number) that are attached as exhibits to Plaintiffs' letter motions, which contain business information or communications that have been designated as Highly Confidential – Attorneys' Eyes Only under the Protective Order in this matter:
 - a. MSFT_AICPY_000000575 (Exhibit 1 to Plaintiffs' letter motion regarding the data working group);
 - b. MSFT_AICPY_000194522 (Exhibit 3 to Plaintiffs' letter motion regarding the data working group);
 - c. Exhibit 6 to Plaintiffs' letter motion regarding Microsoft's LLMs and licenses; and
 - d. Exhibit 7 to Plaintiffs' letter motion regarding Microsoft's LLMs and licenses.

Although “[t]he common law right of public access to judicial documents is firmly rooted in our nation's history,” this right is not absolute and courts “must balance competing considerations

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against” the presumption of access. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). “The proponent of sealing ‘must demonstrat[e] that closure is essential to preserve higher values and is narrowly tailored to serve that interest.’” *Bernstein v. Bernstein Litowitz Berger & Grossman LLP*, 814 F.3d 132, 144 (2d Cir. 2016) (quoting *In re N.Y. Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987)). “[T]he presumption of public access in filings submitted in connection with discovery disputes . . . is generally somewhat lower than the presumption applied to material introduced at trial, or in connection with dispositive motions” *Brown v. Maxwell*, 929 F.3d 41, 50 (2d Cir. 2019). “[W]hile a court must still articulate specific and substantial reasons for sealing such material, the reasons usually need not be as compelling as those required to seal summary judgment filings.” *Id.*

To the extent the letter motions contain descriptions of the various exhibits, which are highly confidential documents, such disclosure would unfairly prejudice Microsoft. The exhibits, which have been designated as Highly Confidential – Attorneys’ Eyes Only pursuant to the Protective Order, contain highly confidential information about the terms of Microsoft’s agreement with OpenAI, Microsoft’s ongoing business relationship with OpenAI, and Microsoft’s relationship with a third party. *See* Declaration of Lucky Vidmar. Microsoft requests that any redacted portions of Plaintiffs’ letter motions describing these documents be sealed from the public and the exhibits referenced above be sealed in their entirety.

The information Microsoft seeks to seal and redact is the type of information commonly found to warrant sealing. *See Regeneron Pharm., Inc. v. Novartis Pharma AG*, No. 1:20-CV-05502, 2021 WL 243943 (S.D.N.Y. Jan. 25, 2021) (finding that requested redactions were “narrowly tailored to protect competitive business information, including the non-public terms of [various agreements]” and concluding “that the sensitivity of this information outweighs the presumption of access”); *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (citation omitted) (concluding that proposed redactions were “generally limited to specific business information and strategies, which, if revealed, ‘may provide valuable insights into a company’s current business practices that a competitor would seek to exploit.’”).

Accordingly, Microsoft respectfully requests that the Court grant this motion for leave to file under seal.

Respectfully submitted,

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